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Supreme Court of the United States

OCTOBER TERM, 1970

No. 564

TENNECO, INC.

versus

GREATER LAFOURCHE PORT COMMISSION.

BRIEF OF TENNECO, INC. (RESPONDENT) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE

Respondent takes issue with the statement of the case set forth in the petitioner's application for writ of certiorari insofar as there is indicated therein that respondent applied to and received from the Department of Public Works of the State of Louisiana "a permit" for the construction of its pipeline across Bayou Lafourche in 1956. Respondent submits that a more accurate statement of the case is as follows:

This case originated in the United States District Court, Eastern District of Louisiana, New Orleans Division.

In 1955, Tenneco, Inc., plaintiff, planned to construct a natural gas pipeline in Lafourche Parish, Louisiana, the route of which was to cross Belle Pass of Bayou Lafourche. By

instrument dated December 16, 1955, the State of Louisiana, as the owner of the beds of navigable streams, granted to plaintiff a right of way for the construction of a gas transmission pipeline across certains lands including the bed of Bayou Lafourche at Belle Pass, P-2. On March 15, 1965, the Department of the Army Corps of Engineers granted to plaintiff the right to make the installation under Belle Pass and provided conditions under which the construction should be performed, which conditions are fully set forth in the permit which was introduced in evidence as P-1.

A letter of no objection from the State of Louisiana Department of Public Works was obtained. This letter was introduced at the trial of this cause as P-3.

The Louisiana Land and Exploration Company owned the property lying outside of the bed of Belle Pass and on the 9th day of February, 1956, plaintiff acquired a right of way or servitude from said company under the terms of which plaintiff acquired the right to construct, operate and maintain a pipeline across lands belonging to the grantee. See Exhibit "A" attached to complaint, Appendix 10-39.

In November of 1963, plaintiff was advised that defendant intended to widen and deepen Belle Pass and Bayou Lafourche, necessitating the lowering of plaintiff's pipeline. Plaintiff acquiesced in the request but conditioned its performance on defendant agreeing to bear that portion of the cost of such operation as would be applicable to work which it would be necessary to perform on lands of Louisiana Land and Exploration Company upon which plaintiff held prior vested rights. Plaintiff and defendant were unable to agree as to plaintiff's

right of reimbursement and, in order not to delay defendant's construction operation, an agreement was entered into between plaintiff and defendant to the effect that plaintiff would lower its line at its own expense and that such action would in no way prejudice any legal right or rights it may have for subsequent reimbursement for any portion of such expense as the law may later determine. Appendix 10-12.

Prior to commencing its dredging operations, defendant obtained an easement from Louisiana Land and Exploration Company which was introduced into evidence as P-5. This document was entitled, "Servitude for Bayou Lafourche Improvement," and attached to the document was a plat showing the area which defendant proposed to excavate and totally destroy and to cause said area to be a part of Belle Pass of Bayou Lafourche. It was established that subject area is the area of contest in this litigation and the area through which plaintiff's pipeline passed prior to excavation. Appendix 158-159.

Plaintiff performed the necessary work to accommodate defendant's operation after which a statement was submitted for reimbursement of that portion of the cost attributable to work performed on private property over which plaintiff held prior recorded rights and which property including plaintiff's rights were destroyed by defendant's dredging operations.

Defendant ultimately denied all liability for reimbursement and this suit was instituted.

The District Court held for the defendant on what plaintiff contends was an erroneous interpretation of a suit entitled:

United States v. 597.75 Acres of Land, Etc., 241 F. Supp. 796 (1965), decided by the United States District Court, W. Dist. of Louisiana.

The Fifth Circuit Court of Appeals agreed with plaintiff's contention and reversed the District Court as shown in Exhibit "B", Page 31, of the application filed herein.

ARGUMENT.

(1) This Cause Does Not Involve Any of the Matters Referred To Under Rule 19 Setting Forth Questions Governing Review On Certiorari.

The jurisdiction of the Federal Courts is based upon diversity of citizenship as set forth under 28 U.S.C. 1332.

According to Rule 19, a review on a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.

Here we do not have a situation where a state court has decided a Federal question nor do we have a situation where the Court of Appeals has rendered a decision in conflict with another court of appeal on the same matter. There is no important state or territorial question decided in this matter. There is no important question of Federal law involved nor is there a Federal question which has been decided in a way in conflict with applicable decisions of this Court. In this case, the Court of Appeals has not departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

CONCLUSION

Since none of the criteria set out in Rule 19 of this Honorable Court are applicable in this case, it is urged that the petition for writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, CLYDE R. BROWN, attorney of record for respondent and a member of the bar of the Supreme Court of the United States, hereby certify that I have this day served copies of the foregoing opposition on:

Mr. Stanley L. Perry
Attorney-at Law
Post Office Box 236
Galliano, Louisiana

Mr. Robert Stamps
Attorney at Law
221 Carondelet Street
New Orleans, Louisiana

By mailing same, postage prepaid, addressed to their respective office, this day of , 1970.

CLYDE R. BROWN